

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

ROGER A. BEACH,

Plaintiff-Appellant,

v.

No. 99-1079

WAKE COUNTY PUBLIC SCHOOL

SYSTEM,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of North Carolina, at Raleigh.
Terrence W. Boyle, Chief District Judge.
(CA-98-621-5-BO2)

Submitted: March 23, 1999

Decided: April 9, 1999

Before WIDENER and ERVIN, Circuit Judges, and
BUTZNER, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Roger A. Beach, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Roger A. Beach appeals from the dismissal of his Age Discrimination in Employment action. The district court dismissed the action as frivolous upon a conclusion that it had been untimely filed. In his complaint, Beach alleged a continuing violation of the ADEA starting from August 11, 1989, but did not include either proof of the charge he filed with the EEOC or the right to sue letter he had received from the EEOC. Included with his informal brief filed in this court, however, was his right to sue letter. Review of this letter reveals that Beach filed his complaint in the district court within the ninety day period set forth therein. Because Beach should have been allowed to particularize his complaint to include his right to sue letter, we vacate the district court's order and remand this action to the district court.* See Johnson v. Silvers, 742 F.2d 823, 825 n.2 (4th Cir. 1984). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED

*By this disposition, we indicate no opinion regarding either the merits of Beach's claims or any defenses thereto or whether he properly exhausted his administrative remedies.